

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

DAVID J. HOWE

*Plaintiff*

v.

U.S. BANK NATIONAL ASSOCIATION,  
AS TRUSTEE FOR THE RMAC TRUST  
SERIES 2016-CTT AND  
RUSHMORE LOAN MANAGEMENT  
SERVICES, LLC

*Defendants*

Case No. 1:19-cv-12597-NMG

**PLAINTIFF'S MOTION FOR  
EXPEDITED DECISION ON  
MOTION FOR PRELIMINARY  
INJUNCTION**

Plaintiff Dave J. Howe ("Howe"), by counsel, respectfully requests that the Honorable Court issue a decision on his Motion for a Preliminary Injunction on or before Friday, January 17, 2020, or as soon as is practicable. As his reasons therefor, Howe states as follows.

A foreclosure is or will be scheduled for February 14, 2020. Though the Court recently adopted a briefing schedule for the parties' pending motions, Howe was recently been informed that publication of the foreclosure advertisement will occur on January 23, January 30, and February 6, 2020 in the Sudbury Town Crier. Based on undersigned counsel's communications yesterday with the Sudbury Town Crier, to stop the publication, the newspaper must be informed of a decision on Howe's Motion for an Injunction no later than Friday, January 17, 2020 by 4:00 p.m.

Howe earns his livelihood in the business of residential custom home building and remodeling. He relies heavily on his credit and his reputation in the community. As

explained in the Expert Report of Douglas A. Minor [ECF 10-2], the reporting of Howe's mortgage at issue has caused him hundreds of thousands of dollars in losses because he has had to borrow from non-traditional sources to fund his developments – and consequently pays above-market interest rates.

When Howe moved for an injunction in Superior Court before the action was removed to this Court, Defendants represented (as part of the basis for Howe's withdrawal of his motion) that they would cancel the newspaper advertisement of the foreclosure auction. Nevertheless, the first of three advertisements was not able to be canceled and a foreclosure was advertised in the Sudbury Town Crier on December 19, 2019.

Howe has resided in the property for over 20 years. He lives there with his wife, children, and his wife's elderly parents. If this request is not granted, Howe expects to suffer what he considers immeasurable damages. Monetary loss "may constitute irreparable harm where the loss threatens the very existence of the movant's business."

*Suero v. Fed. Home Loan Mortg. Corp.*, 2013 U.S. Dist. LEXIS 176813 (D. Mass. Dec. 17, 2013) (quoting *Hull Mun. Lighting Plant v. Mass. Mun. Wholesale Elec. Co.*, 399 Mass. 640, 643, 506 N.E.2d 140 (1987)). As shown in the Expert Report of Douglas A. Minor, Howe has lost between \$634,609 and \$785,912 due to credit damage caused by Rushmore related to its reporting of the property being in foreclosure. Howe has had a reduction in credit capacity due to the reporting of the account in the amount of approximately \$88,313. Where Howe's yearly income is approximately \$175,772, the loss is three to four times his annual income. Thus, to for there to be a foreclosure advertisement, which would further damage his business interests, would cause even more loss.

WHEREFORE, plaintiff David J. Howe respectfully requests that the Court issue a decision on his Motion for Preliminary Injunction on or before Friday, January 17, 2020.

Respectfully submitted,

Plaintiff,  
David J. Howe,  
By counsel,

/s/ Joe Culik  
Josef Culik (BBO #672665)  
Kristin L. Thurbide (BBO #694840)  
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January 15, 2020

**LOCAL RULE 7.1(a)(2) CERTIFICATION**

I hereby certify that I attempted to confer with opposing counsel in an effort to resolve or narrow the issues presented in this motion prior to filing.

/s/ Joe Culik  
Josef C. Culik

**CERTIFICATE OF SERVICE**

I hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non-registered participants on January 15, 2020.

/s/ *Joe Culik*

Josef Culik